

REMARKS

Claims 8, 9, 14-16, 19, 25-26, and 27 are currently pending. Claim 27 is new.

Support for the new claim 27 can at least be found in the final sentence of the first full paragraph of page 4 of the specification as originally filed, which states “Crop plants of interest in the present invention include, but are not limited to soy, cotton, canola, maize, wheat, sunflower, sorghum, alfalfa, barley, millet, rice, tobacco, fruit and vegetable crops, and turfgrass”.

Double Patenting

The Office Action of May 11, 2009 provisionally rejected the then pending claims on the grounds of non-statutory obviousness-type double patenting as being unpatentable over claims 69 and 70 of copending US Application No. 10/870,198.

Applicants file herewith a terminal disclaimer that is in compliance with 37 CFR 1.321(d) to address this rejection. The filing of this terminal disclaimer to obviate this rejection based on non-statutory double patenting by the Applicants was made solely for purposes of advancing prosecution of the pending claims and should not be construed as any admission by the Applicants of the propriety of the rejection (*See* MPEP §804.02, citing *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991)).

CONCLUSION

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant, therefore, respectfully requests that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that a personal communication will expedite prosecution of this application, he is invited to telephone the undersigned at the number provided.

It is not believed that any extensions of time or other fees are required beyond those which may otherwise be provided for in documents accompanying this Response. However, in the event that additional extensions of time or fees are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned for under 37 C.F.R. §1.136(a), and any fees required therefore or for other matters are hereby authorized to be charged to our Deposit Account 20-0823.

Respectfully submitted,



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